

NOT FOR PUBLICATION

DEC 16 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DANIEL SUBIR BAROI,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-71298

Agency No. A76-868-863

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 10, 2004**
San Francisco, California

Before: KOZINSKI, W. FLETCHER, and BYBEE, Circuit Judges.

Daniel Subir Baroi petitions for review of a decision of the Board of
Immigration Appeals (“BIA”), affirming without opinion the decision of the

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

immigration judge (“IJ”). The IJ denied Baroi’s applications for asylum, withholding of removal, and Convention Against Torture relief.¹

We deny the petition because there was substantial evidence for the IJ to find that Baroi was firmly resettled in another country prior to coming to the United States. *See Cheo v. INS*, 162 F.3d 1227, 1229-30 (9th Cir. 1998). Baroi was granted permanent resident status in the Philippines, where he lived for ten months. This raised a presumption that he was firmly resettled there, which he failed to rebut. Thus, Baroi is barred from seeking asylum in the United States. *See* 8 U.S.C. § 1158(b)(2)(A)(vi); *Cheo*, 162 F.3d at 1229-30.

The petition for review is **DENIED**.

¹Baroi does not appeal the IJ’s denial of relief under the Convention Against Torture or his withholding of removal claim.